

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VT 2, LLC, a Washington State limited liability company,

NO.

Plaintiff,

COMPLAINT FOR DECLARATORY JUDGMENT

v.

TRAPP FAMILY LODGE, INC., a Vermont corporation.

Defendant

Plaintiff, VT 2, LLC d/b/a Von Trapp's ("VT"), by and through its attorneys Ironmark Law Group, PLLC, avers as follows:

I. PARTIES

1.1 Plaintiff VT is a Washington State limited liability company, with its principal place of business in Seattle, Washington. VT operates a Bavarian-style restaurant and pub located in Seattle, Washington.

1.2 Defendant Trapp Family Lodge, Inc. (“Trapp Family Lodge”) is a Vermont corporation. On information and belief Trapp Family Lodge has a principal place of business in

1 Stowe, Vermont. On information and belief Trapp Family Lodge operates a lodge, restaurant,
2 and brewery in Stowe, Vermont.

3 **II. JURISDICTION AND VENUE**

4 2.1 This action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§
5 2201 and 2202. Jurisdiction is proper in this court under 15 U.S.C. § 1121, 28 U.S.C. § 1331,
6 and 28 U.S.C. § 1338(a). This court has personal jurisdiction over Trapp Family Lodge because
7 a substantial part of the events giving rise to VT's claims occurred in or were aimed at this
8 judicial district. The claims stated herein arise from Trapp Family Lodge's forum-related
9 activities. In addition, Trapp Family Lodge has knowingly and intentionally committed acts
10 expressly aimed at this judicial district that Trapp Family Lodge knows is likely to, and has
11 caused harm within this judicial district.

12 2.2 Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because a
13 substantial part of the events or omissions that give to the claims herein occurred in this district
14 and a substantial part of the property that is the subject of the action is situated within this
15 district. In addition, Trapp Family Lodge is subject to personal jurisdiction in this district.

16 2.3 Venue in this division is proper under LCR 3(d) because a substantial part of the
17 events or omissions that give to the claims herein occurred in King County and a substantial part
18 of the property that is the subject of the action is situated within King County.

19 **III. FACTUAL ALLEGATIONS**

20 3.1 VT operates Von Trapp's, a Bavarian-style restaurant and pub located in Seattle,
21 Washington. VT opened Von Trapp's on February 10, 2013.
22
23

1 3.2 VT owns U.S. federal trademark registration no. 4,373,927, for the word mark
2 VON TRAPP'S ("VON TRAPP'S Mark"). This is a service mark on the supplemental register
3 and applies to restaurant services in class 43. VT filed its trademark application in February
4 2013. VT also uses VON TRAPP'S as a trade name.

5 3.3 On information and belief, Trapp Family Lodge operates a lodge, restaurant, and
6 brewery in Stowe, Vermont.

7 3.4 On information and belief, Trapp Family Lodge is owned, operated, and/or
8 controlled by members of the Trapp family.

9 3.5 On information and belief, Trapp Family Lodge is the owner of U.S. federal
10 trademark registration no. 1,322,499 for the word mark TRAPP FAMILY covering real estate
11 services in class 36 and lodge services in class 42.

12 3.6 On information and belief, Defendant Trapp Family Lodge is the owner of U.S.
13 federal trademark registration no. 4,169,628 for the work mark TRAPP covering beer in class 32.

14 3.7 On April 4, 2013, VT received a letter from counsel for Trapp Family Lodge. A
15 copy of that letter is attached as Exhibit A hereto. The letter claimed that VT's use of its VON
16 TRAPP'S trademark was likely to cause confusion with Defendant Trapp Family Lodge's
17 TRAPP and TRAPP LAGER trademarks. This letter also seemed to imply that VT's VON
18 TRAPP'S Mark identified living members of the Trapp family and thus required their consent to
19 achieve registration. Trapp Family Lodge demanded that VT cease using its VON TRAPP'S
20 Mark and that it expressly abandon its federal trademark application for VON TRAPP'S, which
21 was pending at that time. The letter demanded the VT cease all use of its VON TRAPP'S Mark
22 by April 18, 2013.
23

1 3.8 On June 6, 2013, VT responded by letter noting that VT's VON TRAPP'S Mark
2 is a surname and does not identify a living individual, and, accordingly, consent of the Trapp
3 family, nor any other living individual was required to register the mark. The letter further noted
4 that Trapp Family Lodge's TRAPP and TRAPP FAMILY marks were not cited against VT's
5 VON TRAPP'S trademark application by the examining attorney at the United States Patent and
6 Trademark Office ("USPTO").

7 3.9 On July 23, 2013 VT's VON TRAPP'S Mark received federal registration on the
8 supplemental register.

9 3.10 On August 30, 2013, after hiring new trademark counsel, Trapp Family Lodge
10 sent another cease and desist letter accusing VT of unfair competition and trademark
11 infringement, demanding that VT submit its federal trademark registration for cancellation and
12 cease all use of its VON TRAPP'S Mark and trade name. That letter is attached hereto as
13 Exhibit B. Trapp Family Lodge threatened VT with litigation seeking injunctive relief and
14 damages.

15 3.11 On May 30 and 31, 2013, Defendant Trapp Family Lodge filed U.S. federal
16 trademark application serial nos. 85,947,543, 85,947,510, and 85,946,077 for VON TRAPP,
17 VON TRAPP and VON TRAPP LAGER, respectively, on an intent to use basis. The examining
18 attorney cited a likelihood of confusion between these marks and VT's VON TRAPP'S
19 trademark. On October 14, 2013, Trapp Family Lodge expressly abandoned all three
20 applications.

3.12 Throughout September and October 2013, VT's counsel attempted to negotiate with Trapp Family Lodge to reach a resolution of the parties' differences. Trapp Family Lodge has rejected VT's settlement offers and continues to insist that VT submit trademark registration for cancellation and cease all use of its VON TRAPP'S Mark and trade name.

3.13 On November 8, 2013 Trapp Family Lodge rejected VT's latest settlement offer and again demanded that VT cease all use of its VON TRAPP'S Mark, accused VT of unfair competition and trademark infringement and threatened VT with imminent litigation seeking injunctive relief, damages, lost profits, and costs. This letter is attached hereto as Exhibit C.

3.14 VT's subsequent and final attempts to resolve this matter were rejected by Trapp Family Lodge.

3.15 It is believed and therefore alleged that Trapp Family Lodge will file a lawsuit against VT should its demands not be met.

IV. CAUSES OF ACTION

**CLAIM ONE: Declaratory Judgment of Non-Infringement
of Trademarks and Service Marks
(15 U.S.C. § 1051 et seq., 28 U.S.C. §§ 2201 and 2202)**

4.1 VT re-alleges and incorporates herein by reference the allegations set forth above as part of this cause of action.

4.2 A significant and immediate dispute has arisen between the parties. An actual, justiciable case or controversy now exists between the parties in that Trapp Family Lodge asserts, and VT denies, that VT, by virtue of using its VON TRAPP'S Mark and trade name, is infringing on Trapp Family Lodge's alleged trademark and service mark rights. Specifically, Trapp Family Lodge asserts that VT's use of its VON TRAPP'S Mark and trade name is likely

to cause confusion, mistake and/or deception with the consuming public as to the source, affiliation, or sponsorship of VT's goods and services and thus there is a likelihood of confusion between the goods and services offered by Trapp Family Lodge under its TRAPP and TRAPP LAGER marks and those offered by VT under its VON TRAPP's Mark pursuant to 15 U.S.C. §§ 1114 and 1125. Trapp Family Lodge has threatened litigation should VT not accede to its demands to cease and desist use of its mark, and to cancel its trademark registration.

4.3 VT requests a declaration and judicial determination that there is no likelihood of confusion between the goods and services offered by the parties, and accordingly, VT's use of its VON TRAPP'S Mark and trade name does not infringe on any protectable trademark or service mark rights of Trapp Family Lodge.

**CLAIM TWO: Declaratory Judgment of No Acts of Unfair Competition
(15 U.S.C. § 1125(a), 28 U.S.C. §§ 2201 and 2202)**

5.1 VT re-alleges and incorporates herein by reference the allegations set forth above as part of this cause of action.

5.2 A significant and immediate dispute has arisen between the parties. An actual, justiciable case or controversy now exists between the parties in that Trapp Family Lodge asserts, and VT denies, that VT, by virtue of using its VON TRAPP'S Mark and trade name, is engaged in acts of unfair competition pursuant to 15 U.S.C. § 1125(a). Trapp Family Lodge has threatened litigation should VT not accede to its demands.

5.3 Accordingly, VT requests a declaration and judicial determination that its use of its VON TRAPP'S Mark and trade name does not constitute federal unfair competition pursuant to 15 U.S.C. § 1125(a).

V. RESERVATION

6.1 VT re-alleges and incorporates herein by reference the allegations set forth above as part of this cause of action.

6.2 VT reserves the right to add other defendants, claims and causes of action based upon investigation and discovery as it develops in this case.

VI. RELIEF REQUESTED

WHEREFORE, plaintiff VT requests relief as follows:

1. A declaration and judicial determination that VT's use of its VON TRAPP'S Mark and trade name does not infringe upon any protectable trademark or service mark rights of Trapp Family Lodge;
 2. a declaration and judicial determination that VT's use of its VON TRAPP'S Mark and trade name does not constitute unfair competition under federal law;
 3. an award of attorney's fees and costs as permitted by statute or equity; and
 4. such other relief as the Court deems just and proper.

DATED this 19th day of November, 2013.

IRONMARK LAW GROUP, PLLC

By /s/ Stacie Foster
Stacie Foster, WSBA No. 23397
2311 N. 45th Street, Suite 365
Seattle, Washington 98103
Tel: (206) 547-1914
Fax: (206) 260-3688
Email: sfoster@ironmarklaw.com
Attorney for VT 2, LLC

By /s/ Rachel E. Buker
Rachel E. Buker, WSBA No. 43005
2311 N. 45th Street, Suite 365

1 Seattle, Washington 98103
2 Tel: (206) 547-1914
3 Fax: (206) 260-3688
4 Email: rebuke@ironmarklaw.com
5 Attorney for VT 2, LLC
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COMPLAINT – 8

IRONMARK LAW GROUP, PLLC
2311 N. 45th Street, Suite 365
Seattle, Washington 98103
Tel: (206) 547-1914
Fax: (206) 260-3688

EXHIBIT A

ROBERT A. CESARI (1928-2008)
JOHN F. MCKENNA (RETIRED)
THOMAS C. O'KONSKI
PATRICIA A. SHEEHAN
MICHAEL E. ATTAYA
CHARLES J. BARBAS
MICHAEL R. REINEMANN
DUANE H. DREGER
JAMES A. BLANCHETTE
DAVID J. THIBODEAU, JR.
AARON S. JACOBS
OMAR M. WADHWA
WILLIAM J. MOSTYN

CESARI AND MCKENNA, LLP
ATTORNEYS AT LAW
88 BLACK FALCON AVENUE
BOSTON, MASSACHUSETTS 02210

Telephone: (617) 951-2500 Telecopier: (617) 951-3927
Website: www.c-m.com

INTELLECTUAL PROPERTY
AND RELATED
CAUSES

A. SIDNEY JOHNSTON
OF COUNSEL

HEATHER SHAPIRO
ANTHONY TOPPER
PATENT AGENT

April 4, 2013

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James Weimann
VT 2 LLC d/b/a Von Trapp's
5307 Ballard Avenue NW
Seattle, WA 98107

Re: VT 2 LLC d/b/a Von Trapp's
Our File No.: 102101-0007

Dear Mr. Weimann:

We represent Trapp Family Lodge, Inc., of 700 Trapp Hill Road, Stowe, VT ("Trapp Family Lodge") in intellectual property matters. Trapp Family Lodge is owned by various members of the von Trapp family and operates the Trapp Family Lodge in Stowe, Vermont. The Trapp Family Lodge also operates the Trapp Family Brewery, which brews lagers year round.

The Trapp Family Lodge uses the marks TRAPP and TRAPP LAGER in connection with its sale of beer. In addition, the Trapp Family Lodge owns federal trademark registration numbers 4,169,628 (TRAPP) and 4,091,571 (TRAPP LAGER) among others.

CESARI AND MCKENNA, LLP

April 4, 2013

Page 2

It has come to our attention that VT 2 LLC is doing business as Von Trapp's, a restaurant that advertises itself as a "Bavarian-inspired bier hall." VT 2 LLC is using the designation VON TRAPP'S, both in block letters and in a stylized form utilizing a Germanic font with a crown. VT 2 LLC is also utilizing the VON TRAPP'S designation with a sub-designation of "Bocce Bier Brats." Further, it has come to our attention that VT 2 LLC has filed an application for federal registration of VON TRAPP'S (Serial No. 85/845,063). Federal law prohibits registration of a name identifying a living individual without their written consent.

The Trapp Family Lodge objects to the use of VON TRAPP'S by VT 2 LLC on the basis that it is likely to cause confusion, or mistake or to deceive others into believing that the beer sold by VT 2 LLC emanates from the Trapp Family Lodge or that VT 2 LLC is in some way or fashion affiliated with the Trapp Family Lodge. The Trapp Family Lodge demands that VT 2 LLC immediately cease all use of the designation VON TRAPP'S or anything similar thereto. Further, the Trapp Family Lodge demands that VT 2 LLC expressly abandons its application for federal registration of VON TRAPP'S.

Please confirm no later than April 18, 2013 that you have ceased all use of VON TRAPP'S. We look forward to your reply.

Yours sincerely,



Duane H. Dreger

DHD

EXHIBIT B



LAWRENCE MEIER
lmeier@drm.com

August 30, 2013

VIA EMAIL ONLY

Chad M. Smith, Esq.
Ironmark Law Group PLLC
2311 N. 45th Street, Suit 365
Seattle, WA 98013

Re: Infringement of TRAPP Marks

Dear Mr. Smith:

We represent Trapp Family Lodge, Inc. ("Trapp") in connection with intellectual property matters, and our client has forwarded your letter of June 6, 2013 on behalf of your client VT 2 LLC d/b/a Von Trapp's ("VT 2") for a response. While there has unfortunately been some unavoidable delay as Trapp sought new trademark counsel, our client remains extremely concerned about VT 2's use of VON TRAPP'S as a service mark and trade name.

Trapp has used the mark TRAPP FAMILY for over 50 years in connection with lodging and restaurant services. The Trapp Family Lodge is a year round resort located in Stowe, Vermont that is owned and operated by the von Trapp family, made famous worldwide through Rodgers and Hammerstein's musical and movie, *The Sound of Music*. The von Trapp family story has been closely associated with the lodging and restaurant services provided under our client's marks from the beginning. As a result, there is a close association in the eyes of consumers between the von Trapp name and the services identified under the TRAPP FAMILY mark. More information about our client's lodge, which includes four dining establishments and a brewery, can be found on its website at www.trappfamily.com.

Our client is the owner of incontestable U.S. Registration No. 1,322,499 for TRAPP FAMILY in connection with "lodge services," then classified in Class 42. Trapp is also the owner of U.S. Registration Nos. 4,091,571 and 4,169,628 for the marks TRAPP LAGER and Design and TRAPP, which it has used since 2011 in connection with beer brewed on the premises. Trapp also enjoys strong common law trademark rights in TRAPP, TRAPP FAMILY LODGE, and

Chad M. Smith, Esq.
Ironmark Law Group PLLC
August 30, 2013
Page 2 of 3

VON TRAPP in connection with a range of hotel, restaurant, entertainment, real estate and other related services. Our client's marks are collectively referred to as the "TRAPP Marks." Copies of the certificates of registration referenced above are enclosed for convenience.

As you know, it has come to our client's attention that VT 2 has recently adopted, and is now using, VON TRAPP'S as a trade name and as a service mark in connection with a Bavarian-themed restaurant located in Seattle, Washington, and as a trademark in connection with beer, as pictured below (collectively, the "VON TRAPP'S Mark").



Your client's use of the VON TRAPP'S Mark for restaurant services and beverages that are competitive with, and highly related to, our client's lodging services, restaurant services and beverages is likely to cause confusion and thereby damage Trapp. Our client's customers and prospective customers will be misled into believing your client's business is associated with, authorized by, or affiliated with Trapp. As you point out in your letter, the "VON" portion of your client's mark simply means "of" or "from," and is in common use as part of surnames. The dominant portion of your client's mark is therefore "TRAPP'S" which is virtually identical to our client's TRAPP Marks. Moreover, as discussed above, customers are highly likely to associate Trapp's services and products with the "von Trapp" story and family name, making confusion inevitable.

Our research also indicates that VT 2 intentionally chose the VON TRAPP'S Mark in order to create an association with the von Trapp family and *The Sound of Music*. Indeed, videos of *The Sound of Music* are apparently shown in the restaurant, and the menu includes items such as "Edelweiss punch," a clear reference to the famous song. To make matters worse, your client has chosen to depict its VON TRAPP'S Mark using a font and graphic element that are virtually identical to ones used for decades in our client's logo:

Chad M. Smith, Esq.
Ironmark Law Group PLLC
August 30, 2013
Page 3 of 3



Your client's use of the VON TRAPP'S Mark therefore constitutes trademark infringement and unfair competition under the Lanham Act and state law, and our client is confident that it will be able to obtain a court order permanently enjoining further use of the mark.

Accordingly, we demand that VT 2: (i) promptly and expressly surrender for cancellation U.S. Registration No. 4,373,927, and any other registrations, or pending applications, for the mark; and (ii) permanently cease all use of the VON TRAPP'S Mark, or any other mark containing TRAPP or variations thereof. We also ask that your client provide us with detailed information on its use of the VON TRAPP'S Mark, including the extent of use in the U.S. and the goods and/or services on which the mark has been used. We require that your client provide us a written commitment of compliance with, and in response to, these demands.

We ask for this written commitment no later than **September 13, 2013**. If VT 2 is willing to comply with these demands, Trapp will consider approving a reasonable amount of time for your client to transition to a new name. If we do not receive an acceptable response within this time frame, we will advise our client to take appropriate steps to prevent the use and continued registration of the VON TRAPP'S Mark, including seeking injunctive relief, damages, lost profits and costs based on your client's acts of trademark infringement and unfair competition.

Nothing in this letter constitutes an admission of any fact or liability, nor a release or waiver of any claims or defenses, that Trapp has or may have.

Very truly yours,
DOWNS RACHLIN MARTIN PLLC

By: Lawrence St. Meier
Lawrence Meier

LHM:ces

Encl.

14438938.3



DOWNS RACHLIN MARTIN PLLC

Int. Cls.: 36 and 42

Prior U.S. Cls.: 100 and 102

United States Patent and Trademark Office

Reg. No. 1,322,499

Registered Feb. 26, 1985

**SERVICE MARK
Principal Register**

TRAPP FAMILY

Trapp Family Lodge, Inc. (Vermont corporation)
Stowe, Vt. 05672

First use Jan. 29, 1962; in commerce Jan. 29, 1962.

For: OPERATING AND MANAGING REAL
ESTATE FOR OTHERS; REAL ESTATE BRO-
KERAGE SERVICES INVOLVING TIME SHAR-
ING AND OTHER INTERESTS IN RESORT
PROPERTY, in CLASS 36 (U.S. Cl. 102).

Owner of U.S. Reg. No. 1,069,099.

First use Jun. 29, 1981; in commerce Jun. 29, 1981.
For: LODGE SERVICES, in CLASS 42 (U.S. Cl.
100).

Ser. No. 423,981, filed May 2, 1983.

R. ELLSWORTH WILLIAMS, Examining Attorney

United States of America

United States Patent and Trademark Office



Reg. No. 4,091,571

TRAPP FAMILY LODGE, INC. (VERMONT CORPORATION)
700 TRAPP HILL ROAD
STOWE, VT 05672

Registered Jan. 24, 2012

FOR: BEER, ALE AND PORTER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

Int. Cl.: 32

FIRST USE 11-10-2011; IN COMMERCE 11-10-2011.

TRADEMARK

OWNER OF U.S. REG. NO. 1,322,499.

PRINCIPAL REGISTER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LAGER", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE VERTICALLY SPACED WORDS "TRAPP" AND "LAGER" WITH A RAM'S HEAD IN BETWEEN, ALL SUPERIMPOSED ON A RECTANGULAR BACKGROUND.

THE ENGLISH TRANSLATION OF "TRAPP" IN THE MARK IS "FOOT STEP, FOOT MARK, TRACK".

SN 77-967,196, FILED 3-24-2010.

SUSAN RICHARDS, EXAMINING ATTORNEY



David J. Kappos

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

TRAPP

Reg. No. 4,169,628

TRAPP FAMILY LODGE, INC. (VERMONT CORPORATION)
700 TRAPP HILL ROAD
STOWE, VT 05672

Registered July 10, 2012

Int. Cl.: 32

FOR: BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

TRADEMARK

FIRST USE 6-7-2011; IN COMMERCE 6-7-2011.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,322,499 AND 4,091,571.

THE ENGLISH TRANSLATION OF THE GERMAN WORD "TRAPP" IN THE MARK IS "FOOT STEP", "FOOT MARK", "TRACK".

SER. NO. 77-891,136, FILED 12-11-2009.

ALEXANDER L. POWERS, EXAMINING ATTORNEY



David J. Kappos

Director of the United States Patent and Trademark Office

EXHIBIT C



LAWRENCE MEIER
lmeier@drm.com

November 8, 2013

CONFIDENTIAL – SETTLEMENT COMMUNICATIONS

Via Email Only

Chad M. Smith, Esq.
Ironmark Law Group PLLC
2311 N. 45th Street, Suite 365
Seattle, WA 98013

Re: VT 2 Settlement Proposal re VON TRAPP'S Mark

Dear Chad:

Confidential Settlement Communication

Confidential Settlement Communication

Confidential Settlement Communication

Chad M. Smith, Esq.
Ironmark Law Group PLLC
November 8, 2013
Page 2 of 3

Confidential Settlement Communication

[REDACTED] we reiterate our demand on behalf of Trapp's that VT 2 permanently cease all use of the VON TRAPP'S Mark, and surrender U.S. Registration No. 4,373,927 for cancellation. We ask for your client's written commitment no later than **November 15, 2013**. If we do not have a satisfactory response by that date we have authority from our client to proceed with a lawsuit seeking injunctive relief, damages, lost profits and costs based on VT 2's intentional acts of trademark infringement and unfair competition.

Nothing in this letter constitutes an admission of any fact or liability, nor a release or waiver of any claims or defenses, that Trapp has or may have.

Very truly yours,

DOWNS RACHLIN MARTIN PLLC

By: _____

Lawrence Meier

LHM:ces

Encl.

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